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PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH B. PITHOUSE,
THOMAS A. KRIDL AND JAMES T. TRIPLETT

Appeal No. 93-3505
Application 07/436,832¹

ON BRIEF

Before MEROS, LYDDANE, and FRANKFORT, Administrative Patent Judges.

MEROS, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the examiner's rejection of claims 38-46, all of the claims pending in the application.

¹ Application for patent filed November 15, 1989. According to applicants, the application is a continuation of Application 07/168,722, filed March 16, 1988, now Patent No. 5,002,822 issued March 26, 1991; which is a division of Application 06/925,349, filed October 30, 1986, now Patent No. 4,761,193 issued August 2, 1988; which is a division of Application 06/567,130, filed December 30, 1983, now Patent No. 4,626,458, issued December 2, 1986.

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The rejected claims are directed to a method of making a recoverable composite structure² comprising a polymeric material and recoverable fibers, which method comprises the steps of (A) applying the polymeric material to cross-linked recoverable fibers and (B) cross-linking the polymeric material.

Claim 38, the sole independent claim, reads as follows:

38. A method of making a recoverable composite structure comprising a polymeric material and recoverable fibers by virtue of which the structure is recoverable, which method comprises:

(A) applying to cross-linked recoverable fibers the polymeric material; and then

(B) cross-linking the polymeric material.

The references relied upon by the examiner are:

Cook et al. (Cook)	3,086,242	Apr. 23, 1963
Montgomery	3,925,134	Dec. 9, 1975
Lott	4,024,002	May 17, 1977

Claims 38-46 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lott, Cook, and Montgomery. We will not sustain the rejection.

² As disclosed in the specification (page 10) the composite structure is said to be "recoverable" because it will recover, on heating or other treatment, towards an original shape from which it has previously been deformed, or towards a new shape governed by the recovered configuration of the fibers it contains, or towards another new configuration from which it has not been previously deformed. This property makes the recoverable composite structure useful for enclosing cable splices in a telecommunications system.

Lott, the primary reference, discloses providing a heat shrinkable fabric, impregnating it with an appropriate material to reduce its air permeability, and allowing the impregnated heat shrinkable fabric to dry and/or cure. After drying and/or curing, the impregnated heat shrinkable fabric is used to cover frame portions of an aircraft after which it is subjected to a heat shrinking operation so that it will cling tightly to said frame portions. Polyester yarn woven into a sheet of cloth is disclosed as heat shrinkable fabric and water based acrylic latex resin is used to impregnate said fabric.

The examiner acknowledges that Lott (1) fails to disclose the use of heat shrinkable fabric comprising cross-linked fibers, (2) fails to disclose that the disclosed polyester fabric comprises cross-linked fibers, and (3) fails to disclose that the water base acrylic latex used to impregnate the polyester fabric is cross-linked during "drying and/or curing" of the impregnated polyester fabric.

Nevertheless, the examiner, in attempting to arrive at the here claimed invention, combines Cook and Montgomery with Lott and urges (1) that Cook would have rendered it obvious to use fabric made from cross-linked fibers as the heat shrinkable fabric employed by Lott to cover frame portions of an aircraft and (2) that Montgomery would have rendered it obvious to

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substitute a cross-linkable acrylic latex adhesive for the water base acrylic latex material used by Lott to impregnated the polyester fabric. We cannot agree.

First, Cook does not deal with heat shrinkable fabric, let alone heat shrinkable fabric made from cross-linked fibers. Rather, Cook's primary concern is heat-shrinkable polyethylene tubing. Thus, not only do we find that Cook is improperly combined with Lott but we also find that Cook would not have suggested or provided the requisite motivation for using fabric made from cross-linked fibers in place of the polyester fabric used by Lott for covering frame portions of an aircraft. Cf. In re Horn, Horn, Horn and Horn, 203 USPQ 969 (CCPA 1979); In re Laskowski, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989); In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

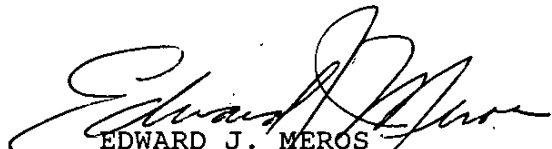
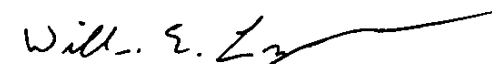

Secondly, Montgomery has nothing to do with heat shrinkable fabric, let alone with the subject matter of covering frame portions of an aircraft with heat shrinkable polyester fabric disclosed by Lott. Rather, the teachings of Montgomery pertain to preparing supported bulked ribbons. Thus, like Cook, Montgomery is not properly combined with Lott and, moreover, certainly would not have provided any reason or motivation for modifying the teachings of Lott. See again the cases cited supra.

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Thus, it is clear that the examiner has not established prima facie obviousness of the claimed subject matter as a whole within the meaning of 35 U.S.C. § 103. Accordingly, the examiner's rejection cannot stand.

The examiner's rejection of claims 38-46 under 35 U.S.C. § 103 is reversed.

REVERSED


EDWARD J. MEROS)
Administrative Patent Judge)
)

WILLIAM E. LYDDANE)
Administrative Patent Judge)
)

CHARLES E. FRANKFORT)
Administrative Patent Judge)

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